

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24607

Docket Number MW-24869

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier, without just and sufficient cause, improperly disciplined Trackman M. C. Brockington on charges that

- (a) he failed to report for duty on April 29, 30, May 1, 7, 15, 29, June 19, 20, 23, 25, July 1, 28, 29 and 30, 1980 (System Docket No. 647);
- (b) he allegedly violated "Rule 3111" on August 8, 1980 (System Docket No. 641);
- (c) he failed to report for duty on September 11 and 12, 1980 (System Docket No. 648);
- (d) he failed to report for duty on September 15, 16, 17 and 18, 1980 (System Docket No. 642);
- (e) he failed to report for duty on October 2 and 3, 1980 (System Docket No. 703).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: The Carrier objects to the Organization combining five separate and unrelated disciplinary cases, involving the same individual, as a single case in its submission to the Board. The Board finds no proper basis for the objection of the Carrier. While the cases were handled as five separate cases on the property, the claims in behalf of the individual, as submitted to the Board by the Organization have not been enlarged upon from the claims as handled on the property, and we do not find that the Carrier has been misled. The Carrier's objection in this respect is denied.

As to the merits, the Carrier has submitted a copy of the transcript of the investigation, or hearing, in each of the cases mentioned in the Statement of Claim. We have carefully reviewed each of the transcripts, and the correspondence covering the on-property handling, and find substantial evidence to support the discipline imposed in each case, except in the case described as:

"(b) he allegedly violated 'Rule 3111' on August 8, 1980 (System Docket No. 6411);"

In the case described as (a), Claimant was assessed 35 demerits; (b) 20 demerits; (c) 40 demerits; (d) 50 demerits and dismissal in all capacities; (e) 60 demerits and dismissal in all capacities. The Organization objects to the assessment of discipline in (e) as Claimant had been notified of dismissal in case (d) prior to the investigation or hearing in (e). The Carrier points out, however, that the occurrences involved in (e) were prior to the dismissal notice in (d), and, therefore, were properly the subject of investigation and hearing. The Board agrees with the Carrier in this respect.

The Board also finds that the Claimant was properly notified of the charges in each case, and that each of the investigations, or hearings, was conducted in a fair and impartial manner. In some cases the Claimant did not appear at the investigation or hearing, or request a postponement. The hearings were, therefore, conducted "in absentia". This Board has previously held that conducting an investigation, or hearing, "in absentia" does not in itself constitute deprivation of an employee's right to a fair and impartial hearing.

It is not disputed that under the collective bargaining Agreement, an accumulation of 90 demerits results in dismissal. The Carrier states that prior to the cases involved herein, Claimant had 30 demerits on his record. Therefore, disregarding the 20 demerits assessed in (b) of the claim, which, as we have indicated, we do not consider justified by the evidence presented in the investigation, or hearing, the Claimant still had an accumulation far in excess of 90 demerits on his record, and was properly subject to dismissal.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employee within the meaning of the Railway labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated, except in (b) of the claim.

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Claim disposed of in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.